

ORDINANCE 1525

AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, DECLARING AN EMERGENCY AND RENEWING A SIX-MONTH MORATORIUM WITHIN THE CITY OF NORTH BEND ON THE ESTABLISHMENT, LOCATION, OPERATION, LICENSING, MAINTENANCE OR CONTINUATION OF MARIJUANA PRODUCERS, PROCESSORS, AND RETAILERS, ASSERTED TO BE AUTHORIZED OR ACTUALLY AUTHORIZED UNDER INITIATIVE MEASURE NO. I-502, OR ANY OTHER LAWS OF THE STATE OF WASHINGTON; DEFINING TERMS; AND PROVIDING FOR SEVERABILITY

WHEREAS, in November 2012, Washington State passed Initiative Measure No. I-502, hereinafter I-502, which established certain affirmative defenses to crimes of marijuana possession under Washington State law and created a regulatory scheme for the production, processing and retail sale of marijuana; and

WHEREAS, I-502 authorized the State Liquor Control Board to develop specific regulations regarding marijuana use over the course of 2013; and

WHEREAS, no provision in I-502 precludes the City from zoning or otherwise regulating marijuana producers, processors, and retailers in a manner consistent with the regulations issued by the State Liquor Control Board, and the Attorney General has likewise concluded that a city may prohibit such uses from locating within incorporated boundaries; and

WHEREAS, the possession or distribution of cannabis (marijuana) has been and continues to be a violation of federal law, through the Controlled Substances Act (“CSA”); and

WHEREAS, two U.S. Attorneys, Michael Ormsby and Jennifer Durkan wrote a letter to the Washington State Governor in 2011, stating that marijuana is a Schedule I controlled substance under federal law and, as such, “growing, distributing and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities.” These U.S. Attorneys also concluded, “state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA;” and

WHEREAS, the enactment of I-502 regarding limited marijuana possession and use has created uncertainty regarding the appropriate regulation of marijuana in the City because at

least some or all of the provisions of I-502 appear to be in conflict with federal law; and

WHEREAS, the enactment by the voters in November 2011 of E2SSB 5073, Chapter 181, Laws of 2011 regarding medical cannabis use and possession, portions of which the Governor vetoed in November 2011. The Governor's veto, coupled with the Washington Supreme Court's recent decision in Cannabis Action Coalition v. City of Kent, has further convoluted the matter of appropriately regulating marijuana in the City because at least some or all of the provisions of E2SSB 5073 conflict with federal law; and

WHEREAS, the City is the recipient of multiple federal grants for which compliance with all federal laws is a requirement; and

WHEREAS, the State Liquor Control Board has issued its rules regarding the regulation and licensing of marijuana processors, producers, and retailers pursuant to I-502; and

WHEREAS, the City needs time to research to determine the appropriate regulatory framework and potential liability for any new uses that are currently allowed, or would be allowed, under the State Liquor Control Board rules as well as Washington and federal law; and

WHEREAS, on November 5, 2013 the City Council held a public hearing on the adoption of the moratorium and thereafter passed Ordinance 1508, adopting a moratorium for six months to provide additional time to research and recommend to the City Council a regulatory framework; and

WHEREAS, since the approval of Ordinance 1508 the City has been working diligently to develop zoning regulations related to the use of marijuana per I-502; and

WHEREAS, since the adoption of Ordinance 1508 the Planning Commission has discussed the use and considered zoning regulations on January 23, 2014, February 27, 2014, March 13, 2014, and March 27, 2014 and a public hearing was held on March 13, 2014; and

WHEREAS; the Planning Commission needs additional time to complete their evaluation of the proposed zoning regulations and therefore it is important to ensure that the existing moratorium is continued without interruption to ensure adequate time for completion of this work;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Findings of Fact: The recitals set forth above, as well as those set forth in earlier ordinances establishing or renewing this moratorium, are hereby adopted as the City Council's findings in support of the moratorium renewed by this ordinance.

Section 2. Moratorium Established: Pursuant to the provisions of Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.220, and RCW 36.70A.390, a moratorium is hereby enacted prohibiting within the City of North Bend the establishment, location, operation, licensing, maintenance, or continuation of any marijuana producer, processor, or retailer, whether for profit or not for profit, asserted to be authorized or actually authorized under I-502, or any other laws of the state of Washington. No building permit, occupancy permit, or other development permit or approval shall be issued for any of the purposes or activities listed above, and no business license shall be granted or accepted while this moratorium is in effect. Any land use permits, business licenses or other permits for any of these operations that are issued as a result of error or by use of vague or deceptive descriptions during the moratorium are null and void, and without legal force or effect. As used in this ordinance, the following terms have the meanings set forth below:

"Marijuana processor" means a person licensed by the state liquor control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers.

"Marijuana producer" means a person licensed by the state liquor control board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

"Marijuana retailer" means a person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.

Section 3. No Nonconforming Uses: No use that constitutes or purports to be a marijuana producer, processor, or retailer as those terms are defined in this ordinance, that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of the North Bend Municipal Code and that use shall not be entitled to claim legal nonconforming status.

Section 4. Effective Period for Renewal of the Moratorium: The moratorium set forth in this ordinance shall be in effect for a period of six months from the date this ordinance is passed and shall automatically expire at the conclusion of that six-month period unless the same is extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the city council.

Section 5. Public Hearing: Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council held a public hearing during the City Council's regular meeting on April 15, 2014.

Section 6. Referral to Staff: The Planning and Economic Development Director and the Finance Director are hereby authorized and directed to continue working to develop appropriate land use, business licensing, and other regulations for presentation to the North Bend Planning Commission and City Council.

Section 7. Severability: If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

Section 8. Effective Date: This Ordinance, as a public emergency ordinance necessary for the protection of the public health, public safety, public property, or public peace, shall take effect and be in full force immediately upon its adoption. Pursuant to Matson v. Clark County Board of Commissioners, 79 Wn. App. 641, 904 P.2d 317 (1995), underlying facts necessary to support this emergency declaration are included in the “WHEREAS” clauses, above, all of which are adopted by reference as findings of fact as if fully set forth herein.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 15TH DAY OF APRIL, 2014.

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Kenneth G. Hearing, Mayor

Michael R. Kenyon, City Attorney

ATTEST/AUTHENTICATED:

Published: April 23, 2014
Effective: April 15, 2014

Susie Oppedal, City Clerk